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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/525,493

10/17/2005

Rudiger Mahlo

AP 10516

7478

7590

09/19/2006

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EXAMINER

NGUYEN, CHUONG P

ART UNIT

PAPER NUMBER

3663

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/525,493

Applicant(s)

MAHLO, RUDIGER

Examiner

Chuong Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,11 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10,11 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's 07/19/2006 Amendment, which directly amends claims 10, 11, 14, 15 and cancels claims 9, 12, 13 is acknowledged.

Claim Rejections - 35 USC § 112

2. Claim 10, 11, 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 14, the term "marginal" is a relative term which renders the claim indefinite. The term "marginal" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant points out on page 7, 2nd paragraph in his specification about the term. However, examiner still unclear of what is meant or encompassed by the term. How are the "marginal" conditions ranged or determined for evaluating and identifying the defected conditions of a component? Are the "marginal" conditions based on wear-and-tear conditions or suspicious factor or experimental data or combination of all? The metes and bound of the claim cannot be ascertained by one having ordinary skill in the art.

Other claims are also rejected based on the dependency of claim 14.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 10, 11, 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Breed (6,738,697).

Regarding claim 14, Breed clearly discloses a method for monitoring chassis functions and chassis components of a motor vehicle, including the steps of: evaluating information provided by at least one of the elements of the group, consisting of control systems mounted in the vehicle and additional sensors; performing evaluations relating to vehicle dynamics on the basis of said information with reproducible conditions; and taking into account the evaluations relating to driving dynamics in order to statistically evaluate specific features which reflect chassis-related conditions, and to subsequently identify defects (Figures 5 & 7; column 10 lines 29-61; column 11 lines 26-67; column 12 lines 1-4); wherein at least one of the following reproducible specific conditions are detected and evaluated by a detection of patterns on the basis of the information supplied: straight travel, cornering, stable vehicle, unstable vehicle, freely rolling vehicle, decelerated vehicle, accelerated vehicle (column 10 lines 29-41; col 14, lines 35-38; col 37, line 32 – col 38, line 8); wherein the detected specific conditions and anomalies induced by a defect and typical of a situation are taken into account when assessing and

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evaluating the obtained information (column 11 lines 26-67). Also as best understood by the examiner, it appears inherent that Breed's invention would be concerned with the predetermined marginal conditions to be met (i.e. by using pattern recognition technique) in order for the evaluation of the detected conditions and the anomalies induced by a defect and typical of a situation take place (col 11, lines 48-53; col 15, line 18 - col 16, line 28; col 30, line 58 - col 40, line 38).

Claims 10, 11, 15, and 16 are rejected based on the reasons are the same as those given in section in section 4 of the 03/22/2006 Office Action.

5. As to limitations which are considered to be inherent in a reference, note the case law of In re Ludtke, 169 U.S.P.Q. 563; In re Swinehart, 169 U.S.P.Q. 226; In re Fitzgerald, 205 U.S.P.Q. 594; In re Best et al, 195 U.S.P.Q. 430; and In re Brown, 173 U.S.P.Q. 685, 688.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breed in view of Beck et al. (2002/0107625 or 6,778,894).

The reasons are the same as those given in section in section 6 of the 03/22/2006 Office Action.

Response to Arguments

8. Applicant's arguments filed on 05/15/2006 have been fully considered but they are not persuasive.

Applicants argue in their response that the subject matter of claim 14 is inherent to Breed's disclosure and reading claim 14 into Breed would only be possible in improper hindsight.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In addition, examiner disagrees with the applicant about the subject matter of claim 14 is not inherent in Breed's invention. Examiner has revised the rejection to provided the complete details of Breed that teach each and every limitation as recited in amended claims 14. By

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revising the rejection, Examiner has shown the applicants that Breed does inherently teach the subject matter of claim 14. Therefore, the rejection based on Breed is still proper.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuong Nguyen whose telephone number is 571-272-3445. The examiner can normally be reached on 8:00 - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CN


JACK KEITH
SUPERVISORY PATENT EXAMINER